

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP805-FT

Cir. Ct. No. 2011CV57

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

COLE R. JOHNSON AND HEATHER HUGHES,

PLAINTIFFS-RESPONDENTS,

V.

MOUNTAIN WEST FARM BUREAU MUTUAL INSURANCE COMPANY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Polk County:
MOLLY E. GALEWYRICK, Judge. *Reversed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM.¹ Cole Johnson and Heather Hughes were injured in an auto accident in Wisconsin. They sought underinsured motorist benefits under a Montana insurance policy, which contained an extraterritorial clause that increases coverage for an out-of-state accident to provide the minimum amounts and types of coverage required to use that state's roads. The circuit court interpreted this clause to increase coverage to the minimums required of Wisconsin-based insurance policies by the omnibus statute, WIS. STAT. § 632.32. We reverse because WIS. STAT. ch. 344 is the proper measure of coverage under Johnson's and Hughes's extraterritorial clause.

BACKGROUND

¶2 The relevant facts are undisputed. On January 9, 2011, Johnson and Hughes, who are both Montana residents, were involved in a serious accident in Wisconsin. At the time, Johnson and Hughes were traveling in a vehicle belonging to Wayne Huffman, also a Montana resident. The car was registered, and principally garaged, in Montana.

¶3 Johnson and Hughes sought underinsured motorist benefits from Huffman's insurer, Mountain West Farm Bureau Mutual Insurance Company. Mountain West's policy provided \$25,000/\$50,000 in underinsured motorist benefits.² Mountain West conceded that, under Montana's stacking rules, Johnson

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (2011-12). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted. Some of the statutes involved have since been amended; because these amendments did not take effect until after the accident in this case, they are irrelevant.

² Mountain West concedes that Johnson and Hughes were permissive users of Huffman's vehicle and are therefore insured under Huffman's policy. It also concedes the negligent driver's vehicle was underinsured, and Johnson's and Hughes's damages exceeded the declared underinsured motorist coverage.

and Hughes were entitled to \$50,000 each. Mountain West offered this amount to Johnson and Hughes.

¶4 Johnson and Hughes rejected Mountain West's offer. They relied on the following extraterritorial clause:

1. **Out-of-State Insurance.** If an auto accident covered by this policy occurs in any state or province other than the one in which "your" "insured auto" is principally garaged, "we" will interpret "your" policy for the accident as follows:
 - a. If the state or province has any law:
 - (1) Specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the "Declarations," "your" policy will provide the higher specified limit;
 - (2) Requiring an "insured" to maintain insurance whenever the "insured" uses a vehicle in that state or province, "your" policy will provide at least the required minimum amounts and types of coverage.

Johnson and Hughes believed subsection (2) of the extraterritorial clause adopted Wisconsin's omnibus statute, WIS. STAT. § 632.32, which mandated that Wisconsin-issued insurance policies contain underinsured motorist coverage of at least \$100,000 per person and \$300,000 per accident. WIS. STAT. § 632.32(4)(a)1. Johnson and Hughes argued that, with stacking, they were entitled to \$200,000 each. Mountain West responded that the extraterritorial clause adopted only Wisconsin's financial responsibility law, WIS. STAT. ch. 344, which did not require underinsured motorist insurance and therefore did not increase the amount of policy coverage.

¶5 The circuit court granted summary judgment for Johnson and Hughes. Focusing on the extraterritorial clause, it concluded subsection (2) would

be superfluous if it did not provide underinsured motorist coverage. It also found the provision ambiguous and relied on public policy to support its interpretation of the clause in favor of the insured.

DISCUSSION

¶6 The sole issue on appeal is whether subsection (2) of the extraterritorial clause in Huffman’s auto policy adopts the minimum coverage required by Wisconsin’s financial responsibility law, WIS. STAT. ch. 344, or by Wisconsin’s omnibus statute, WIS. STAT. § 632.32.³ Insurance contract interpretation presents a question of law that we review de novo. *Folkman v. Quamme*, 2003 WI 116, ¶12, 264 Wis.2d 617, 665 N.W.2d 857. The interpretation and application of a statute also presents a question of law. *Racine Harley-Davidson, Inc. v. State Div. of Hearings & Appeals*, 2006 WI 86, ¶14, 292 Wis. 2d 549, 717 N.W.2d 184.

¶7 Subsection (2) plainly refers to the financial responsibility law. The extraterritorial clause obligates Mountain West to provide the minimum amounts and types of coverage required of the insured to use Wisconsin roads.⁴ These requirements are set by the financial responsibility law. Wisconsin courts have recognized that the financial responsibility law is the yardstick for coverage under an extraterritorial clause. See *West Bend Mut. Ins. Co. v. Stegner*, 2000 WI App 91, ¶11, 234 Wis. 2d 364, 610 N.W.2d 150 (Extraterritorial clauses “may act to

³ The parties agree Wisconsin law applies to the issue on appeal. We therefore assume, without deciding, that Wisconsin law applies.

⁴ The policy adopts any law requiring an insured to maintain insurance “whenever the ‘insured’ uses a vehicle in that state”

increase the limit of the existing coverage to the minimum amount of bodily injury coverage required under Wisconsin’s financial responsibility law.”); ***Keane v. Auto-Owners Ins. Co.***, 159 Wis. 2d 539, 556, 464 N.W.2d 830 (1991) (“The extraterritorial clause is meant to comply with any coverage or limits of liability required by a state’s financial responsibility law.”).

¶8 Wisconsin’s financial responsibility law is found in WIS. STAT. ch. 344. The financial responsibility law reflects a legislative directive to “ensure compensation to parties who have suffered injury to themselves or their property as a result of another person’s negligent operation of a motor vehicle.” ***Plevin v. DOT***, 2003 WI App 211, ¶8, 267 Wis. 2d 281, 671 N.W.2d 355. With limited exceptions, “no person may operate a motor vehicle upon a highway in this state unless the owner or operator of the vehicle has in effect a motor vehicle liability policy with respect to the vehicle being operated.” WIS. STAT. § 344.62(1).

¶9 Wisconsin’s financial responsibility law does not require underinsured motorist coverage, which is fatal to Johnson’s and Hughes’s claims. The requirements for a motor vehicle liability policy are set forth in WIS. STAT. § 344.33(2). *See* WIS. STAT. § 344.61(2). Predictably, that subsection requires only *liability* coverage—not underinsured motorist coverage. *See* WIS. STAT. § 344.33(2) (requiring insurance “against loss from the liability imposed by law for damages arising out of the ... use of the motor vehicle”). The required liability coverage is subject to the minimum liability limits set forth in WIS. STAT. § 344.01(2)(am)2., namely \$50,000 for injury or death to one person and \$100,000 for injury or death to more than one person.

¶10 Johnson’s and Hughes’s claim that subsection (2) of the extraterritorial clause refers to WIS. STAT. § 632.32 rather than WIS. STAT. ch. 344

is unpersuasive. Section 632.32 is not Wisconsin’s financial responsibility law. Rather, that section sets forth the minimum requirements of motor vehicle insurance policies “issued or delivered in [Wisconsin].” *See* WIS. STAT. § 632.32(1). It regulates the content of in-state motor vehicle policies; it does not set forth the minimum requirements necessary to operate on Wisconsin roads. Thus, the fact that Wisconsin-issued policies are required to include underinsured motorist coverage of at least \$100,000 per person and \$300,000 per accident is irrelevant. The statute does not address the minimum requirements for out-of-state drivers insured elsewhere.

¶11 Johnson and Hughes argue that if the extraterritorial clause does not provide coverage coextensively with WIS. STAT. § 632.32, then subsection (2) of the clause is superfluous. *See 1325 N. Van Buren, LLC v. T-3 Group, Ltd.*, 2006 WI 94, ¶56, 293 Wis. 2d 410, 716 N.W.2d 822 (courts should avoid interpretations that render portions of a contract meaningless, inexplicable, or mere surplusage). They reason that subsection (2) then requires nothing more than subsection (1), which conforms the policy limits for bodily injury or property damage to those required by Wisconsin law. Although the circuit court was moved by this argument, we are not. The extraterritorial clause is not state-specific, nor does it have a temporal element. It is possible that a state has, or could enact, laws that require coverage other than for bodily injury or property damage. For example, if the Wisconsin legislature were to pass legislation tomorrow requiring, as a component of financial responsibility, underinsured motorist coverage, subsection (2) would permit Johnson and Hughes to legally operate on Wisconsin roads without policy modification. Accordingly, subsection (2) is not superfluous.

¶12 Johnson and Hughes also argue the policy is vague, ambiguous, and subject to competing interpretations, and therefore must be construed in favor of

the insured. *See Folkman*, 264 Wis. 2d 617, ¶13. They assert the most reasonable construction of the extraterritorial clause “is to increase the UIM limits to what the insured’s limits would be if the vehicle were licensed or principally garaged in Wisconsin.” We disagree. The meaning of subsection (2) is clear: Mountain West is obligated to provide the amount and types of coverage sufficient to allow the insured to legally operate in other states. A reasonable insured would not read the extraterritorial clause as shifting the location of the “home” state each time he or she traveled upon foreign roads. Indeed, the concept of one location as a principal garage is intrinsic to the extraterritorial clause.

¶13 Lastly, Johnson and Hughes make a public policy argument for extending to them the coverage required of Wisconsin policies under WIS. STAT. § 632.32. They point out Wisconsin’s long-standing policy of finding coverage where the policy terms permit it. *See, e.g., Herwig v. Enerson & Eggen*, 98 Wis. 2d 38, 40, 295 N.W.2d 201 (Ct. App. 1980), *aff’d*, 101 Wis. 2d 170, 303 N.W.2d 669 (1981). In this case, the policy terms afford Johnson and Hughes \$50,000 each, nothing more. We see no reason to alter unambiguous policy terms and legislative commands under the guise of public policy.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

